



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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Finding of No Significant Impact/Decision Record

CACA 047712

Amendment to Independence Material Site 118 Easement for Length of Use, Material Extracted, and the Use of Processing Equipment

Background

The Department of Interior Board of Land Appeals (174 IBLA 78 dated 03/13/2008) set aside and remanded my prior BLM Decision Record (dated 03/29/2007 for CACA 047712) which amended an existing California Department of Transportation (CalTrans) easement for the Independence Material Site 118, located north of Independence, CA. The 2007 Decision Record was set aside and remanded back to the BLM to address a Visual Resource Management (VRM) issue raised by an affected party who appealed the 2007 decision.

In my prior 2007 decision, CalTrans was authorized to expand their original easement in order to complete several U.S. Highway 395 expansion projects. I authorized the easement for a 10 year period, allowing additional fill material to be excavated and authorizing the placement of the full array of mineral material processing equipment within the pit. IBLA found that the decision's allowance for a variance from meeting VRM Class III standards for up to 2 years of the project violated the Bishop Resource Management Plan (RMP) because such a variance was intended only for application to temporary projects that would terminate and be rehabilitated within 2 years. IBLA inferred that because the easement to use the material pit was authorized for 10 years, BLM must require conformance with VRM Class III standards throughout the life of the project.

Decision

I am formulating this new and separate Decision based on IBLA's ruling, additional consideration of the environmental assessment's (EA) documented impacts for this project (EA 170-07-07 dated 03/29/2007), and further discussions with CalTrans representatives and the appellant.

Through this Decision, I convey to CalTrans an easement for the Independence Material Site 118 to use and develop for U.S. Highway 395 expansion work. This

Decision addresses IBLA's ruling by requiring the implementation of visual resource contrast mitigations immediately, in order to conform throughout the life of the project to the Bishop RMP VRM III prescription.

The bulk of this Decision is described as Alternative 2 and 3 in the attached Environmental Assessment (EA 170-07-07 dated 03/29/07) and includes specific, required mitigation measures to reduce environmental impacts.

Pursuant to Act of August 27, 1958, as amended, 23 U.S.C., Section 317 and authorities contained in the Federal Land Management Policy Act of 1976 (90 Stat. 2766, 43 U.S.C. 1737), CalTrans' existing easement deed for the Independence Material Site #118, issued in 2006, is amended and expanded as follows: 1. use of the material site is authorized for 10 years, expiring 10 years from the existing 2006 easement authorization in 2016; 2. the amount of mineral material extracted is increased 650,000 cubic yards to a total of 1.2 million cubic yards; and 3. processing plants can be located within the material site existing pit. Processing operations may include crushing and screening activities, asphalt batch plants, a concrete batch plant, and additional equipment. Processing plants are authorized to be co-located within the pit. Mining operations can include the use of bulldozers, front-end loaders, belly dump trucks, bobtail dump trucks, maintenance trucks, water trucks, and haul trucks. As part of this decision, a concurrent Letter of Consent will be issued to the Federal Highway Administration authorizing the amendment of the existing highway easement deed held by CalTrans as described in this Decision Record.

It is in the public interest to amend the existing easement for the material site as described above. The 10 year use period and additional material will allow Caltrans to use the material pit for the Black Rock-Independence, Manzanar, and Olancho 4-lane highway expansion projects. The ability to locate the processing plants within the pit will result in an efficient and cost effective material processing operation. According to Caltrans' estimates, this will save 2 to 5 million dollars in project material contracting costs. Additionally and importantly, the pit location will improve motorist safety by locating the pit outside the highway right-of-way. It will reduce the visual and noise distraction of processing plants along the highway, lessen haul truck travel on Highway 395, and diminish dust emissions along the highway from material stockpiling and processing.

The expansion of the three Highway 395 4-lane projects will result in overall improved safety and enjoyment for the traveling public within the Owens Valley and the eastern Sierra.

Finding of No Significant Impact

I have reviewed this environmental assessment including the explanation and resolution of any potentially significant environmental impacts. I have determined that a combination of Alternatives 2 and 3 with the mitigation measures described below will not have any significant impacts on the human environment and that an EIS is not required. There will be no effect on threatened or endangered species as a result of the action.

RMP Conformance

I have determined that the proposed project is in conformance with the Bishop RMP, which was approved March 25, 1993. This plan has been reviewed, and the proposed action conforms to the land use plan terms and conditions as required by 43 CFR 1610.5. Although the EA documents that placement of tall batch plants in the pit would violate VRM Class III standards in Alternative 2 and, by implication, Alternative 3, this decision requires that CalTrans fully meet VRM Class III standards within 30 days of this decision and throughout the entire 10 year project life. Mitigations required in this decision will bring potential visual contrasts into conformance with the VRM III standard.

Decision Rationale

The EA identified non-conformance of Visual Resource Management (VRM) Class III standards by tall processing plants (50-70 feet high) for two out of four Key Observation Points for Alternative 2. In order to bring the processing plants in Class III conformance, I am requiring the application of mitigations to the processing plants immediately. These mitigations are described in the Mitigation section below and include painting the processing plants to match the surrounding natural features and lowering the elevation of the pit to conceal visual contrasts from key observation points.

Although pit use is authorized for a 10 year life span, the pit will be used irregularly during its life. It is expected that as material is removed from the pit, the pit floor depth will increase up to 50 feet as described in Alternative 3. Lowering of the floor will also lower the height of any plants located in the pit, thereby improving conformance with Class III standards and reducing the need for visual mitigations. The plants will not be present during the entire 10 year period but will be used sporadically when each separate highway project begins. The pit is expected to be used for three separate highway 4-lane projects, and as such, plants will be installed, used, and then removed between each project. The need for visual mitigations should diminish through time as the pit is deepened during separate and distinct excavation phases.

Throughout the next two years, as the pit deepens from excavation activity the equipments' visual contrasts should lessen, as it becomes more concealed, thus

precluding the need for painting. The BLM will monitor and determine what screening mitigations may be modified during the life of the project as the pit deepens and such mitigations may become moot.

Since the operations are confined to an existing material pit that has been disturbed and no new surface area will be affected, rehabilitation, in this case, will occur in compliance with the State of California Surface Mining and Reclamation Act (SMARA) requirements. Rehabilitation will occur in phases throughout the 10 year project life as each project terminates, then for the entire pit when the 10 year project expires. Each project will recover and rehabilitate portions of the pit that will no longer be used in the remainder of its 10 year life. Throughout the life of the project, even during periods between projects when the material pit is not in use, CalTrans is required under SMARA to implement best management practices for storm water, erosion, and particulate matter control.

Other than facility height, color is another element that can increase VRM contrasts. Obviously, striking colors that contrast with the surrounding terrain can greatly increase contrasts, reducing scenic values. The mitigations described below are designed to reduce visual impacts identified in the EA, including color. The mitigations identified in the EA will reduce the visual impact to Class III standard. An unavoidable consequence will be an increased cost of the 4-lane project to the taxpayers.

In my review of the EA's mitigations for Alternative 2 and 3, I decided to adopt visual mitigations (see Residual Impacts section in EA for Alternative 2) from Alternative 2 to bring any potential visual contrast into VRM III conformance.

The Residual Impacts section of the EA for Alternative 2 states that although the mitigation will bring the visual contrasts to within Class III standards, its implementation will increase the operational costs. These additional costs will occur from painting of equipment and plant placement in pit areas which are not necessarily optimal for operations.

Discussion of Alternatives

I am choosing a combination of **Alternatives 2 and 3** to meet CalTrans' highway expansion needs to improve traffic flow and safety as well as mitigate expected VRM contrasts during the pit's operations. This decision is based on the following criteria: 1) this combination meets Caltrans' needs; 2) increased amount of material will be available for all 4-lane highway projects from Black Rock to Olancha; 3) the location of the processing plants in the pit will improve highway safety; 4) there will be a reduction of equipment processing noise; 5) the use of one pit versus multiple pits will result in savings of 2-5 million dollars for the highway projects; and 6) the VRM Class III standards are maintained during the life of the operation.

There will also be a reduction of haul-truck traffic on Hwy 395 and subsequent improved safety. The visual impact of the plants in the pit will be less than having the plants located along the highway. The environmental impacts of this alternative are similar to Alternative 1 for most resources although the offsite impacts associated with locating the processing plants outside of the pit will now occur on public land. Visual impacts will be mitigated and monitored, and noise impacts will be lower within the pit. Highway safety will be improved by relocating the plants away from the highway.

A brief discussion of the EA's alternatives that serve as the foundation of my Decision is presented below:

Alternative 1 is the No Action Alternative and represents the existing situation. This alternative describes CalTrans' existing easement rights within the pit and the expected impacts under this alternative. CalTrans is authorized to use the pit for 5 years, extract 550,000 cubic yards of material, and only use a steel grid for material processing. CalTrans is not authorized to conduct crushing and processing operations or locate batch plants in the pit, subsequently, the processing operations and batch plants will probably be located along Highway 395 and within the existing 400 foot wide right-of-way. Although pit use will be limited to extracting and loading material only, a loss of efficiency and a large cost increase would occur due to increased material loading, unloading and its transport to various plant locations outside of the pit. CalTrans has estimated the cost increase at 2 to 5 million dollars. Plant locations outside of the pit will also decrease safety and increase noise on the highway as travelers pass in close proximity to these large operations. CalTrans has indicated that a 5 year pit use is the minimum necessary to meet their highway construction needs for two projects. A five year pit life does not allow CalTrans the flexibility to plan and build the three highway projects. Under Alternative 1, the extracted material volume will not supply the material needs for the Olancho 4-lane project. The environmental impacts of this alternative on public land are minimal, but some impacts are then transferred offsite to other areas, namely, those impacts associated with the offsite plant locations.

Alternative 2 would amend the existing easement – extending its term for an additional 5 years and allow processing and batch plants to operate in the pit. Material extraction would remain the same as in Alternative 1, about 550,000 cubic yards. This alternative meets Caltrans' needs except for the limited material authorized for extraction. Subsequently, there would be insufficient material for the Olancho 4-lane project. Additional material sites to support the Olancho project are limited because of the lack of available sites. The environmental impacts of this alternative are similar to Alternative 1 for most resources but the offsite impacts associated with locating the processing plants outside of the pit to the edge of the highway have been transferred to the public land. Visual impacts will be mitigated to conform to VRM Class III standards.

Noise impacts will be lower within the pit. Highway safety will be improved due to the plants being located away from the highway.

Many of the visual resource mitigations adopted in this Decision originate from Alternative 2.

Alternative 3 would amend the existing easement to extend ten years, allow processing and batch plants to operate in the pit, and allow excavation to total 1.2 million cubic yards - - - an increase of 650,000 cubic yards above Alternative 1. Additionally, the pit would increase 50 feet in depth.

This alternative meets CalTrans' needs but without requiring mitigation during initial phases of the project, it violates the VRM Class III prescription in two out of the four key observation points described in the EA until the pit's depth increases to better conceal contrasting and tall material processing equipment.

Many of the excavation and development elements of this Decision originate from Alternative 3.

Public Involvement

Public involvement for the EA included a request for public comment on the CalTrans proposal which was sent to 52 governmental agencies and interested publics, and a request for comment notice published twice in the Inyo Register on November 11, 2006 and December 2, 2006. The public comment period ran from November 11 to December 11, 2006. A presentation of the proposal was provided to the Inyo County Board of Supervisors on January 9, 2007, and the Inyo Register published an article on January 23, 2007 discussing the CalTrans presentation to the Board of Supervisors.

The BLM distributed the EA for public review on February 8, 2007 to government agencies and interested publics of record with a 30-day comment period. It was posted on the CalTrans and BLM Bishop Field Office websites and placed in the Lone Pine, Independence, Big Pine, and Bishop public libraries. The availability of the EA, request for comments, and notice of public meeting was published in the Inyo Register on February 13, 2007. The notice for a public comment meeting was again published in the Inyo Register on February 27, 2007. A public meeting was conducted in the Independence Legion Hall on February 28, 2007. The meeting provided a review of the CalTrans proposal to amend the Independence Pit 118, a question and answer period, and an opportunity to receive EA comments. The Inyo Register published a final notice for comments on March 3, 2007. The EA 30-day comment period ran from February 8 to March 10, 2007.

Sixteen written comments were received concerning the CalTrans proposal. Most commentors expressed support for the Highway 395 4-lane highway

projects and using the pit for mineral materials. Inclusion of processing plants in the pit also received supportive comments, but several concerns were also raised about this use. The majority of concerns were impacts to nearby communities from dust, noise, visual, water wells, and odors. Other concerns questioned whether the use of the pit would be allowed for other than the 4-lane projects; other comments noted that the project should be held to the same requirements and standards private companies are held to and that public comment or review of the amended SMARA plan should be implemented. These concerns were addressed in the EA under Public Involvement.

One comment stated that the impact for Hydrology under Alternative 2 and 3 was incorrect based on the proposed action for those alternatives. This has been reviewed and the impact analysis has been changed to show that there could be a loss of flood storage and water spreading in the pit, and that LADWP may need to utilize other channels for flood control and water spreading.

IBLA Decision

An appeal was filed with the IBLA within the appeal timelines set forth in my original Decision dated 03/29/2007. The Department of Interior Board of Land Appeals reviewed the case (174 IBLA 78 dated 03/13/2008), setting aside and remanding this Decision back to the BLM to address a Visual Resource Management (VRM) issue surfaced by the party who appealed the 2007 decision.

This new Decision addresses IBLA's ruling, resolving the VRM issue raised by requiring immediate implementation of specific mitigations that will bring the project into conformance with Class III VRM standards established by the Bishop RMP. Conformance with Class III VRM standards must be maintained throughout the term of the authorization.

Mitigation Measures

It is my decision to implement the project with the mitigation measures identified below. BLM personnel will routinely monitor CalTrans' use of the material site to assess and enforce compliance with VRM Class III standards. CalTrans will be required to implement measures from the following range of mitigations to meet VRM standards as determined by the authorized BLM officer:

1. Locate processing plants and tall equipment in the lowest portion of the pit.
2. Begin material excavation in areas where subsequent plants are to be located, thereby, lowering the pit floor and the processing plants to improve VRM Class III conformance.

3. Utilize olive green/dark netting or paint processing equipment a dull dark olive green above pit grade to conform to BLM's VRM criteria.
4. Separate multiple plants within the pit to avoid a clustering visual effect.
5. CalTrans will notify and require all current and future material pit contractors to comply with BLM's VRM Class III requirements throughout the term of this authorization.

Authorized Official: _____

Field Manager, Bishop Field Office

Date: _____

Appeals

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is taken your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.